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20 IN THE UNITED STATES DISTRICT COURT  
21 FOR THE EASTERN DISTRICT OF WASHINGTON

22	WILDEARTH GUARDIANS, WESTERN )	Case Number:
23	WATERSHEDS PROJECT, and KETTLE )	
24	RANGE CONSERVATION GROUP, )	
25	)	
26	Plaintiffs, )	COMPLAINT FOR
27	)	DECLARATORY
28	v. )	AND INJUNCTIVE RELIEF
	)	
	U.S. FOREST SERVICE; GLENN )	(National Forest Management Act,
	CASAMASSA, Pacific Northwest )	National Environmental Policy Act,
	Regional Forester, U.S. Forest Service; )	Endangered Species Act, and
	RODNEY SMOLDON, Forest Supervisor, )	Administrative Procedure Act)

1 Colville National Forest, )

2 Defendants.

3 **INTRODUCTION**

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5 1. The U.S. Forest Service is tasked with responsibly managing public  
6 lands livestock grazing so as not to impair the diversity and viability of native  
7 wildlife inhabiting our national forests. As the federal land manager, this  
8 responsibility means the Forest Service must carefully evaluate whether federal  
9 forest lands are suitable for domestic livestock grazing and explore methods for  
10 reducing conflicts between wild animal populations and the sheep and cattle it  
11 authorizes to graze those lands. Yet, the federal managers of the Colville National  
12 Forest in northeast Washington have wholly ignored this responsibility. They have  
13 neglected their duty to address grazing conflicts and protect the Forest's newly  
14 recolonizing gray wolves, by refusing to adopt management directives that can  
15 reduce and avoid wolf-livestock conflicts. First, the Forest Service rejected  
16 Plaintiffs' calls for incorporating conflict reduction measures at the Forest-wide  
17 scale, in the agency's newly revised Land and Resource Management Plan ("Forest  
18 Plan"). Then, the Forest Service rejected calls to update individual (site-specific)  
19 Allotment Management Plans and annual grazing instructions, to incorporate  
20 conflict reduction measures for those portions of the Colville National Forest  
21 where wolf-livestock conflicts have concentrated for the past several years.  
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COMPLAINT

1 Instead, since 2012, the Forest Service has reissued status quo grazing practices  
2 and sat idly by while the Washington Department of Fish and Wildlife (“WDFW”)  
3 killed 26 state-listed endangered wolves at the behest of one ranching  
4 corporation—Diamond M Ranch (“Diamond M”) —which grazes its cattle on  
5 rugged, heavily-treed portions of the National Forest.  
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8 2. Indeed, roughly 90% of the state’s “lethal control actions” have  
9 responded to conflicts between wolves and cattle grazing on the Colville National  
10 Forest (the “Colville”). And, 26 of 31 gray wolves killed by WDFW to date – 84%  
11 – have been lethally removed from this National Forest in response to depredations  
12 of Diamond M’s cows and calves. Unlike other nearby ranchers, Diamond M  
13 steadfastly refuses to employ commonsense measures that help avoid conflicts  
14 with wolves. But despite this grisly record, the Forest Service continues  
15 authorizing Diamond M’s grazing without imposing any measures to mitigate  
16 wolf-livestock conflicts and ensure this native carnivore’s preservation on the  
17 Colville. In so doing, the Forest Service has abdicated its management  
18 responsibilities, violating the National Forest Management Act (NFMA), National  
19 Environmental Policy Act (NEPA), and Administrative Procedure Act (APA).  
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24 3. The 1.1-million-acre Colville National Forest, geographically  
25 considered part of the northern Rocky Mountains, with the Kettle River Range on  
26 the western half and the Selkirk Mountains defining the eastern half, is mostly  
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1 comprised of densely forested, rugged terrain: prime habitat for native carnivores  
2 like wolves, grizzly bear, and lynx. But the Colville is also widely grazed by cattle.  
3 The Forest Service administers approximately 68% of this National Forest (about  
4 745,000 acres) as livestock grazing “allotments.” Still, the agency refuses to  
5 evaluate or adopt management tools for avoiding livestock-predator conflicts on  
6 the Colville, both at the Forest-wide scale, in its newly revised comprehensive  
7 Forest Plan, and at the allotment-specific level in Allotment Management Plans  
8 (“AMPs”) and annual grazing authorizations for permittees like Diamond M.  
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12 4. Accordingly, Plaintiffs challenge the Forest Service’s revised 2019  
13 Colville Forest Plan and underlying environmental analysis, for failing to evaluate  
14 the impacts of domestic livestock grazing to newly recolonizing gray wolves, for  
15 failing to consider a single management alternative that includes measures for  
16 reducing wolf-livestock conflicts on the Colville, and for failing to consider  
17 whether all 68% of the National Forest that is allocated for domestic livestock  
18 grazing remains suitable for this use in light of the recurring conflicts. The Forest  
19 Service’s procedural failures resulted in a substantively flawed Forest Plan,  
20 violating both NEPA, NFMA, and those statutes’ implementing regulations.  
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25 5. The Forest Service also violated NEPA by failing to supplement forty-  
26 plus year-old environmental analyses for livestock grazing management at the site-  
27 specific level for allotments permitted to Diamond M Ranch, in light of wolves  
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1 2412 (costs and fees) and 1346 (United States as a defendant). This cause of action  
2 arises under the laws of the United States, including the APA, 5 U.S.C. § 701 *et*  
3 *seq.*, NEPA, 42 U.S.C. § 4321 *et seq.*, NFMA, 16 U.S.C. § 1600 *et seq.*, the ESA,  
4 16 U.S.C. § 1536, and these statutes' implementing regulations. An actual,  
5 justiciable controversy exists between the parties, and the requested relief is  
6 therefore proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 701-06.  
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9 10. Venue is proper in this Court under 28 U.S.C. § 1391 because a  
10 substantial part of the events or omissions giving rise to the claims herein occurred  
11 within this judicial district.  
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13 11. The federal government waived sovereign immunity in this action  
14 pursuant to 5 U.S.C. § 702.  
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## 16 **PARTIES**

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18 12. Plaintiff WILDEARTH GUARDIANS ("Guardians") is a non-profit  
19 conservation organization dedicated to protecting and restoring the wildlife, wild  
20 places, wild rivers, and the health of the American West. Guardians has more than  
21 275,000 members and supporters across the West, including those who reside in  
22 Washington and visit the Colville National Forest. Guardians maintains offices in  
23 several states, including Portland, Oregon; Seattle, Washington; Missoula,  
24 Montana; Denver, Colorado; and Santa Fe, New Mexico. Guardians has a long  
25 history of working to protect and restore native wildlife species across the West,  
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1 including gray wolves, grizzly bears, and Canada lynx. Guardians operates a  
2 wildlife program with campaigns focused on native carnivore protection and  
3 restoration, and on reining in the controversial, cruel, and often counterproductive  
4 practices of killing native predators on behalf of the livestock industry and in  
5 response to irresponsible grazing practices on federal public lands.  
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8 13. Plaintiff WESTERN WATERSHEDS PROJECT (“WWP”) is a  
9 nonprofit membership organization with over 12,000 members and supporters,  
10 which is dedicated to protecting and conserving the public lands and natural  
11 resources of watersheds in the American West. WWP, as an organization and on  
12 behalf of its members, is concerned with and active in seeking to protect and  
13 improve the wildlife, riparian areas, water quality, fisheries, and other natural  
14 resources and ecological values of watersheds throughout the West, and in  
15 Washington. WWP has a longstanding interest in the management of livestock  
16 grazing on the Colville National Forest, and in ensuring that any such grazing is  
17 ecologically sustainable and requires peaceful coexistence with all species of  
18 native wildlife, including the gray wolf.  
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23 14. Plaintiff KETTLE RANGE CONSERVATION GROUP (“KRCG”) is  
24 a rural, grassroots, federal non-profit environmental charity formed in 1976 in  
25 Republic, Washington, with a membership of 500. KRCG is focused on a mission  
26 to defend wilderness, protect biodiversity, and restore ecosystems of the upper  
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1 Columbia River Basin. KRCG project work includes oversight of federal  
2 management of the Okanogan and Colville National Forests, promoting dry and  
3 damaged forest restoration, environmental education to citizens, business and  
4 community groups, granting scholarships to high school graduates each May,  
5 preservation of Wilderness and protecting fish and wildlife. KRCG is a founding  
6 member of the board of Northeast Washington Forest Coalition, a collaborative  
7 partnership created in 2003 between timber industry, forest and wildlife  
8 conservation and recreation interests.  
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12 15. Defendant FOREST SERVICE is an agency of the United States  
13 within the Department of Agriculture, and is charged with managing the public  
14 lands and wildlife of the Colville National Forest, in accordance and compliance  
15 with NEPA, NFMA, the ESA and their implementing regulations.  
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18 16. Defendant GLENN CASAMASSA is the Pacific Northwest Regional  
19 Forester for the U.S. Forest Service. He is sued solely in his official capacity as the  
20 decisionmaker who signed the final Record of Decision for the 2019 Colville  
21 Forest Plan challenged herein.  
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23 17. Defendant RODNEY SMOLDON is the Forest Supervisor for the  
24 Colville National Forest. In that capacity, Defendant Smoldon is responsible for  
25 the management of the Colville National Forest and its compliance with NEPA,  
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1 NFMA and ESA requirements. Defendant Smoldon is sued solely in his official  
2 capacity.

3 18. Defendants are collectively referred to as the “Forest Service.”  
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5 19. Plaintiffs bring this action on their own behalf and on behalf of their  
6 members and supporters, many of whom live in or near areas occupied by wolves  
7 in parts of Washington where the wolf has lost protection under the federal  
8 Endangered Species Act, including the Colville National Forest, or visit these areas  
9 occupied by wolves for hiking, camping, photography, observing wildlife and  
10 studying the ecological role of top predators in native ecosystems, and other  
11 recreational and professional pursuits. Plaintiffs’ members, supporters, and staff  
12 gain aesthetic enjoyment from observing, attempting to observe, hearing, seeing  
13 evidence of, and studying wild wolves, grizzly bears and lynx, including observing  
14 signs of these species’ presence in the Colville National Forest and surrounding  
15 areas and observing ecosystems enhanced by these animals. The opportunity to  
16 possibly view wolves, grizzly bear, and lynx, or signs of these animals, in these  
17 areas is of significant interest and value to Plaintiffs’ members, supporters, and  
18 staff, and increases their use and enjoyment of public lands. Plaintiffs’ members,  
19 supporters, and staff have engaged in these activities in the past, and intend to do  
20 so again in the near future. Plaintiffs, as well as their members, supporters, and  
21 staff, are dedicated to ensuring the long-term survival and recovery of the gray  
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1 wolf, grizzly bear, and lynx throughout the contiguous United States, and  
2 specifically in the Pacific Northwest. The legal violations alleged in this Complaint  
3 therefore cause direct injury to the aesthetic, conservation, recreational, scientific,  
4 educational, inspirational, and wildlife preservation interests of Plaintiffs and their  
5 members, supporters, and staff.  
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8 20. Plaintiffs' members, supporters, and staff have an interest in ensuring  
9 the Forest Service complies with all applicable federal statutes and regulations in  
10 authorizing domestic livestock grazing on federal forest lands. Plaintiffs' members,  
11 supporters, and staff have an interest in ensuring that the Forest Service fulfills its  
12 obligation to manage the Colville National Forest in a manner that does not impair  
13 the diversity and viability of native wildlife, particularly already vulnerable  
14 populations of state-listed endangered gray wolves (also a designated Forest  
15 Service "sensitive" species), which inhabit these National Forest lands. Plaintiffs  
16 and their members, supporters, and staff have an interest in ensuring the Forest  
17 Service takes the requisite hard look at modifying grazing management in order to  
18 mitigate recurring wolf-livestock conflicts that result in the lethal removal of  
19 wolves from the Colville National Forest. The interests of Plaintiffs, their  
20 members, supporters, and staff have been, are being, and, unless the relief prayed  
21 for in this Complaint is granted, will continue to be adversely and irreparably  
22 injured by Defendants' failure to comply with federal law. These are actual,  
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1 concrete injuries, traceable to Defendants’ conduct, that would be redressed by the  
2 requested relief.

### 3 4 **LEGAL BACKGROUND**

#### 5 **National Forest Management Act and Livestock Grazing**

6 21. The National Forest Management Act (“NFMA”), 16 U.S.C. §1600-  
7 1614, is the primary statute governing the administration of national forests.

8 22. NFMA establishes a two-step process for forest planning. *Id.* §  
9 1604(a). First, it requires the Forest Service to develop, maintain, and revise Land  
10 and Resource Management Plans (“Forest Plans”) for each national forest. 16  
11 U.S.C. § 1604(a). The Forest Plan guides natural resource management activities  
12 forest-wide, setting standards, management goals and objectives, desired  
13 conditions and monitoring and evaluation requirements.  
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17 23. NFMA also requires that the Forest Service adopt regulations  
18 specifying guidelines for Forest Plans. *Id.* § 1604(g)(3); *see* 36 C.F.R. § 219 *et seq.*  
19 Those guidelines must specifically ensure that Forest Plans “provide for diversity  
20 of plant and animal communities based on the suitability and capability of the  
21 specific land area in order to meet overall multiple-use objectives....” 16 U.S.C.  
22 §1604(g)(3)(B).  
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26 24. Here, the governing Forest Plan is the Forest Service’s revised 2019  
27 Colville Forest Plan, which the agency adopted on October 21, 2019, to replace its  
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1 former 1988 Forest Plan. The 2019 Colville Forest Plan was revised under the  
 2 transition provisions of the 2012 NFMA planning rule (36 C.F.R. § 219), which  
 3 allows the agency to follow and adopt the 1982 NFMA planning procedures (*see*  
 4 C.F.R. parts 200 to 299, Revised as of July 1, 2000). The Forest Service elected to  
 5 apply the 1982 NFMA planning provisions in nearly all respects for the 2019  
 6 Colville Forest Plan.<sup>1</sup>

9 25. The 1982 planning rule contains both a general wildlife diversity  
 10 provision and also a specific mandate to ensure viable wildlife populations at the  
 11 forest scale. The Forest Service’s “duty to ensure viable populations ‘applies with  
 12 special force to sensitive species’” like gray wolves on the Colville. *Native*  
 13 *Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1249 (9th Cir. 2006)  
 14 (internal citation omitted); Forest Service Manual (FSM), Ch. 2670 (Forest Service  
 15 policy for “sensitive species”).<sup>2</sup>

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 21 <sup>1</sup> The only noted exception being that the Forest Service developed the revised  
 22 Plan’s monitoring requirements per 36 C.F.R. § 219.12 of the 2012 Rule.

23 <sup>2</sup> Forest Service policy defines “sensitive” species as those plant and animal  
 24 species identified by a Regional Forester for which population viability is a  
 25 concern, as evidenced by significant current or predicted downward trends in  
 26 population numbers or density and habitat capability that would reduce a species’  
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26. The rule’s diversity mandate has both procedural and substantive elements. Substantively, the Forest Service must ensure its Forest Plans provide for “diversity of plant and animal communities...consistent with the overall multiple-use objectives of the planning area.” 36 C.F.R. § 219.26 (1982). Procedurally, to ensure such diversity is adequately “considered throughout the planning process[,]” the Forest Service evaluates wildlife diversity, in terms of prior and present conditions, based on inventories that include “quantitative data.” *Id.* For each planning alternative, the Forest Service’s planning team must consider how diversity will be affected by the proposed management practices. *Id.*

27. The 1982 rule’s population viability mandate requires the Forest Service to adopt management direction that ensures fish and wildlife habitat will be managed “to maintain viable<sup>3</sup> populations of existing native and desired non-native vertebrate species in the planning area [*i.e.* throughout the relevant national forest].” 36 C.F.R. § 219.19; *see also Idaho Sporting Congress, Inc. v. Rittenhouse*,

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existing distribution. FSM, Ch. 2670. In addition to being a state-listed endangered species, the gray wolf is also a Forest Service, Region 6 sensitive species.

<sup>3</sup> A viable population is one that has the estimated numbers and distribution of reproductive individuals to ensure its continued existence is well distributed in the national forest (“the planning area”) (36 C.F.R. § 219.19).

1 305 F.3d 957 (9th Cir. 2002).

2 28. The 1982 rule also instructs the Forest Service to determine the  
3 capability and suitability of National Forest System lands for domestic livestock  
4 grazing during the forest planning process. 36 C.F.R. § 219.20. Capability refers to  
5 the potential of an area of land to produce particular resources, such as forage to  
6 support the needs of both native wildlife and domestic livestock, which in turn  
7 depends on the physical components of the area such as climate, slope, landform,  
8 soils, and geology, as well as the application of management practices. *Id.* at §  
9 219.3. Suitability, on the other hand, is the *appropriateness* of applying certain  
10 management practices to a particular portion of the forest, “as determined by an  
11 analysis of the economic and environmental consequences and the alternative uses  
12 forgone.” *Id.* In determining the suitability of lands for grazing, the Forest Service  
13 must expressly consider possible conflict among livestock and the forest’s wild  
14 animal populations, and methods of regulating such conflicts. *See id.* § 219.20.  
15 This forest-wide grazing suitability determination then informs management  
16 direction at the allotment-specific level.  
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23 29. Once a Forest Plan is adopted, the Forest Service implements the plan  
24 by approving or rejecting site-specific actions for the National Forest System lands  
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1 that it governs, including authorizing livestock grazing on specific areas designated  
2 as “allotments.”<sup>4</sup>

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4 30. The NFMA and its implementing regulations require that all site-  
5 specific actions be consistent with the governing Forest Plan. 16 U.S.C. § 1604(i);  
6 36 C.F.R. § 219.15 (2012). A project or activity is consistent if it conforms to the  
7 applicable “components” of the Forest Plan, including the standards, guidelines,  
8 and desired conditions that are set forth in the Forest Plan and that collectively  
9 establish the details of forest management. *Id.* § 219.15 (2012); *All. for the Wild*  
10 *Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1110 (9th Cir. 2018).

13  
14 31. The Forest Service manages livestock grazing on an allotment by  
15 issuing a grazing permit; an Allotment Management Plan (AMP); and an annual  
16 operating plan (AOP) or instruction (AOI). *Or. Natural Desert Ass’n (“ONDA”) v.*  
17 *U.S. Forest Serv.*, 465 F.3d 977, 979 (9th Cir. 2006). Each of these is a site-  
18 specific action which must be consistent with the Forest Plan. *Buckingham v. Sec’y*  
19 *of U.S. Dept. of Ag.*, 603 F.3d 1073, 1077 (9th Cir. 2010).

22 32. A grazing permit grants a license and establishes the number, kind,  
23 and class of livestock; the allotment to be grazed; and the period of authorized  
24 use. *ONDA*, 465 F.3d at 980 (citing 36 C.F.R. §§ 222.1–222.4; 43 U.S.C. § 1752).

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27 <sup>4</sup> A “designated area of land available for livestock grazing,” within a national  
28 forest is called an allotment. 36 C.F.R. Ch. II, Part 222; 36 C.F.R. § 222.1(b)(1).

1 A grazing permit is ordinarily issued for a term of ten years, and may be canceled,  
2 modified, or suspended (in whole or in part) under certain conditions, which  
3 include changes in resource conditions present on an allotment (*e.g.* new sensitive  
4 species) and the need to impose resource protection measures. *Id.*

6 33. An AMP is a required allotment-specific planning document that: (1)  
7 prescribes the manner in, and extent to which, grazing operations will be  
8 conducted in order to meet multiple-use and other goals and objectives, including  
9 the protection of special resources occurring on the allotment; (2) describes any  
10 range improvements in place or to be installed and maintained to meet allotment  
11 objectives; and (3) contains any other grazing management provisions and  
12 objectives prescribed by the Forest Service. 36 C.F.R. §§ 222.1(b)(2), 222.2; *see*  
13 *also ONDA v. U.S. Forest Serv.*, 312 F.Supp.2d 1337, 1340 (D. Or. 2004). AMPs  
14 are to be updated as needed and must be consistent with the governing Forest Plan.  
15 36 C.F.R. § 222.2.

20 34. An AOP or AOI is issued annually prior to the grazing season and sets  
21 out instructions to the permittee for that season's grazing operations. Because an  
22 AOI is issued annually, it is meant to respond to conditions that the Forest Service  
23 could not or may not have anticipated and planned for in the AMP or grazing  
24 permit. For instance, an AOI may provide new site-specific management direction  
25 in light of changed circumstances or resource conditions on the allotment in any  
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1 given year, such as disturbance from wildfire, drought conditions, success or  
 2 failure of habitat restoration projects, water quality, or degree of risk to sensitive or  
 3 listed species affected by grazing. *See ONDA*, 465 F.3d at 980–81. As the  
 4 environmental analysis for the revised Colville Forest Plan states: “Annual  
 5 operating instructions for livestock grazing permittees should ensure livestock  
 6 numbers are balanced with capacity and address any relevant resource concerns  
 7 (e.g., forage production, wildlife, weeds, soils, etc.).”

### 10 **National Environmental Policy Act and Livestock Grazing**

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 12 35. NEPA “is our basic national charter for protection of the  
 13 environment.” 40 C.F.R. § 1500.1(a). NEPA has two fundamental purposes: (1) to  
 14 guarantee that agencies take a “hard look” at the consequences of their actions  
 15 before the actions occur by ensuring that “the agency, in reaching its decision, will  
 16 have available, and will carefully consider, detailed information concerning  
 17 significant environmental impacts”; and (2) to ensure that “the relevant  
 18 information will be made available to the larger audience that may also play a role  
 19 in both the decisionmaking process and the implementation of that decision.”

20  
 21 *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). “NEPA  
 22 emphasizes the importance of coherent and comprehensive up-front environmental  
 23 analysis to ensure informed decision making to the end that ‘the agency will not  
 24 act on incomplete information, only to regret its decision after it is too late to  
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1 correct.”” *Blue Mtns. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th  
2 Cir. 1998) (citation omitted).

3  
4 36. To that end, NEPA requires federal agencies to prepare a detailed  
5 Environmental Impact Statement (“EIS”) for all major federal actions that may  
6 significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C).

7  
8 37. If an action does not fall within a categorical exclusion (CE), 40  
9 C.F.R. § 1508.4, an agency may prepare an Environmental Assessment (EA) to  
10 determine whether it needs to prepare an EIS. 40 C.F.R. §§ 1501.4(b); 1508.9. An  
11 EA is a concise public document that briefly describes the proposal, examines  
12 alternatives, considers environmental impacts, and provides a list of individuals  
13 and agencies consulted. 40 C.F.R. § 1508.9. If the agency concludes there is no  
14 significant impact associated with the proposed project or activity, it may issue a  
15 Finding of No Significant Impact (FONSI) in lieu of preparing an EIS. 40 C.F.R. §  
16 1508.9(a)(1).  
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20 38. NEPA analyses must consider a range of reasonable alternative  
21 actions and thoroughly assess direct, indirect, and cumulative environmental  
22 effects of the proposed alternative actions. 42 U.S.C. § 4332(2)(C); 40 C.F.R. Parts  
23 1502 and 1508.  
24

25  
26 39. An agency’s duties do not end upon completing a NEPA analysis,  
27 however; agencies also must prepare a supplemental NEPA analysis when  
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1 “significant new circumstances or information relevant to environmental concerns  
2 and bearing on the proposed action or its impacts” emerge. 40 C.F.R. §  
3 1502.9(c)(1)(ii).  
4

5 40. The Forest Service uses the NEPA planning process at both broad,  
6 programmatic-levels (*e.g.* the development of Forest Plans), and at the individual  
7 project or “site-specific” level (*e.g.* the development and approval of grazing  
8 AMPs).  
9

10 41. Agency actions taken pursuant to NMFA and NEPA are reviewable  
11 by this Court under the Administrative Procedure Act. 5 U.S.C. §§ 702, 704, 706.  
12

### 13 **Endangered Species Act**

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15 42. The intent of the ESA is to conserve ecosystems upon which  
16 threatened and endangered species depend, and recover listed species to the point  
17 at which they no longer need the protections of the Act. 16 U.S.C. §§ 1531(b);  
18 1532(3).  
19

20 43. A federal agency that authorizes an activity that may affect a listed  
21 species or federally designated critical habitat must consult with the USFWS over  
22 the impacts of that activity to ensure that it does not jeopardize the continued  
23 existence of listed species or result in the destruction or adverse modification of  
24 critical habitat. 16 U.S.C. § 1536(a)(2). Jeopardize means to reduce appreciably the  
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1 likelihood of both the survival and recovery of the species in the wild by reducing  
2 the reproduction, numbers, or distribution of the species. 50 C.F.R. § 402.02.

3  
4 44. During the ESA consultation process, if the action agency concludes  
5 in a “Biological Assessment” that the activity is not likely to adversely affect listed  
6 species or adversely modify critical habitat, and the USFWS concurs with that  
7 conclusion in a “Letter of Concurrence,” then the consultation is complete. *Id.* §§  
8 402.12, 402.14(b). If, however, the action agency or USFWS determines that the  
9 activity is likely to adversely affect listed species or critical habitat, then USFWS  
10 completes a “Biological Opinion” to determine whether the activity will jeopardize  
11 the species or result in destruction or adverse modification of critical habitat. *Id.* §  
12 402.14.

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16 45. The ESA and its regulations also prohibit “take” of listed species,  
17 which includes harassing, harming, wounding, or killing the species. 16 U.S.C. §§  
18 1538; 1533(d); 1532(19).

19  
20 46. Once the consultation process is complete, the agencies have a duty to  
21 ensure that it remains valid. For instance, the Forest Service must reinitiate  
22 consultation with USFWS if “new information reveals effects of the action that  
23 may affect listed species or critical habitat in a manner or to an extent not  
24 previously considered” or “a new species is listed or critical habitat designated that  
25 may be affected by the identified action.” 50 C.F.R. § 402.16.  
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## FACTUAL BACKGROUND

### Gray Wolves Return to Washington

47. A robust population of wolves, numbering as many as 5,000, once ranged throughout nearly all of Washington, but a government-supported policy of eradication led to the near-extirpation of wolves from the state by the early 1900s.

48. By the time the ESA passed in 1973, there were very few wolves remaining in the lower 48 states. The gray wolf was one of the first species to be listed as endangered under the Act. This action extended federal protections to the few wolves then remaining in the contiguous United States.

49. Consequently, in 1980, when the gray wolf was added to Washington's state list of endangered species, there were few reports of wolf sign in the state and no evidence of a resident population of breeding wolves.

50. In 1995-96, USFWS reintroduced wolves to Yellowstone National Park and central Idaho as part of an effort to recover the species. This Northern Rockies wolf population soon began to increase in size and expand in territory. It also became a source population for wolves dispersing westward into Washington in the early 2000s.

51. In 2008, the state's first two wolf packs since the 1930s were confirmed. One pair, named the Diamond Pack, was first documented in 2008 in Pend Oreille County and confirmed to have pups the following two years. A

1 second pair, the Lookout Pack, was confirmed in Okanogan County, with litters  
2 documented in 2008 and 2009.

3 52. By the end of 2019, WDFW counted 108 wolves in 21 packs of which  
4  
5 10 were successful breeding pairs.<sup>5</sup>

6 53. Most of Washington's gray wolf population growth has occurred in  
7  
8 the northeast corner of the state, encompassing the Colville National Forest, and is  
9 composed of wolves dispersing westward from the Northern Rockies and  
10 southward from British Columbia, Canada.  
11

### 12 **Wolf Conservation and Management in Washington**

13 54. The USFWS first proposed to delist the Northern Rockies wolf  
14  
15 population in 2007, claiming it had met minimum recovery goals of 10 breeding  
16 pairs in each of three recovery areas for three consecutive years by the early 2000s.  
17

18 55. After federal courts found unlawful and set aside this and subsequent  
19 decisions to delist the Northern Rockies wolf population, Congress legislatively  
20

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21  
22 <sup>5</sup> WDFW explains that a "successful breeding pair" is used as the unit of  
23 measurement because it provides a higher level of certainty in assessing population  
24 status and documenting reproduction. Under its state wolf recovery plan, WDFW  
25 defines a successful breeding pair of wolves as an adult male and an adult female  
26 with at least two pups surviving to December 31 in a given year. The Confederated  
27 Tribes of the Colville Reservation, which borders the Colville National Forest to  
28 the south, also reported an estimated 37 wolves on tribal lands in 2019.

delisted this segment of the country's gray wolf population through a 2011 Appropriations Act rider. This federally delisted Northern Rockies wolf population (defined by USFWS as a "distinct population segment") included wolves in the eastern one-third of Oregon and Washington states. Thus, gray wolves remain a federally-listed endangered species in the western two-thirds of Washington and a state-listed endangered species throughout the state.<sup>6</sup>



Figure 2. *Washington Gray Wolf Conservation and Management 2019 Annual Report*. (WDFW).

<sup>6</sup> Washington law defines "Endangered" as any wildlife species native to the state of Washington that is seriously threatened with extinction throughout all or a significant portion of its range within the state. WAC 232-12-297. On March 15, 2019, the USFWS published a proposed rule to remove the gray wolf from the list of endangered and threatened species. 84 Fed. Reg. 9,451, 9,648 (Mar. 15, 2019). If the rule is finalized as proposed (and not invalidated by a legal challenge) the effect would be to remove the gray wolf from under the federal ESA's protection throughout the contiguous U.S., including all of Washington State.

1           56. Under state law, once a species is listed as endangered, WDFW is  
2  
3 required to write a species recovery plan with target population objectives, an  
4 implementation plan to reach those objectives, and criteria for delisting, education,  
5 and monitoring. WAC 220-610-110 §11.1.  
6

7           57. Accordingly, in 2007, WDFW began developing a Wolf Conservation  
8 and Management Plan, which the state agency adopted in 2011. Wolf populations  
9 in the eastern one-third of the state where the species is no longer federally listed  
10 are managed under the auspices of the 2011 Wolf Conservation and Management  
11 Plan (“WA wolf plan”).  
12  
13

14           58. The WA wolf plan is “the state recovery plan” for gray wolves. Its  
15 purpose is to “ensure the reestablishment of a self-sustaining population of gray  
16 wolves in Washington and to encourage social tolerance for the species by  
17 addressing and reducing conflicts.”  
18  
19

20           59. To promote wolf recovery in Washington, the plan provides that  
21 “[n]on-lethal management will be emphasized while the species is recovering” and  
22 that lethal control will be used to address conflicts only as a “last resort.”  
23

24           60. Nevertheless, WDFW has killed 31 wolves from eight packs, resulting  
25 in the near or total destruction of four packs since 2012. These lethal control  
26 actions eliminated up to 11% of the state’s wolf population each year in the years  
27 in which they occurred.  
28



1           61. Though WDFW’s wolf kill orders have faced intense legal scrutiny,  
2 with some litigation in state court still pending, it is the Forest Service that  
3 authorizes the livestock grazing on federal public lands that has been the root cause  
4 of 90% of Washington’s wolf-livestock conflicts. Of WDFW’s 31 lethal control  
5 actions, 28 (90%) were either completely or partially in response to predations of  
6 federally permitted cattle grazing on the Colville National Forest, with 26 (84%)  
7 wolves being killed on behalf of a single permittee—Diamond M.  
8  
9

### 10                           **The Colville National Forest and Livestock Grazing**

11  
12           62. The Colville National Forest spans Ferry, Stevens, and Pend Oreille  
13 Counties in northeast Washington; bordered to the north by British Columbia,  
14 Canada, to the west by the Okanogan-Wenatchee National Forest, to the east by the  
15 Idaho Panhandle National Forests, and to the south by a portion of the  
16 Confederated Tribes of the Colville Reservation.<sup>7</sup>  
17  
18

19           63. A diverse array of fish, wildlife and plants inhabit the Colville,  
20 including many state and federally listed threatened and endangered species and  
21 species designated by the Forest Service as “sensitive” because their regional  
22 viability is a concern. These include federally endangered woodland caribou;  
23 federally threatened Canada lynx, grizzly bear, and bull trout; wolverine and  
24  
25

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26  
27 <sup>7</sup> In 2018, the Confederated Tribes of the Colville established a hunting season for  
28 wolves on their tribal lands, for tribal members only, with no annual limits.



1 which evaluated six alternatives (no action, proposed action, and alternatives P, R,  
2 B, and O) for the future Forest-wide management of the Colville.

3  
4 68. Plaintiffs submitted detailed comments on the draft EIS for the revised  
5 Forest Plan, calling upon the Forest Service to take a hard look at how proposed  
6 Forest management for activities like livestock grazing affect newly recolonizing  
7 gray wolves and other vulnerable wildlife that inhabit the Colville.  
8

9 69. In September 2018, the Forest Service released its final EIS (FEIS)  
10 and draft Record of Decision (ROD) for the revised Colville Forest Plan.  
11

12 70. Despite purporting to follow the wildlife diversity and viability  
13 provisions of the 1982 NFMA planning rule, and despite the highly controversial  
14 and well documented pattern of wolf-livestock conflicts on the Colville's grazing  
15 allotments, the FEIS did not take the legally required hard look at how wildlife  
16 diversity and wolf population viability on the Colville may be influenced by  
17 conflicts between wolves and livestock that typically result in lethal wolf removal.  
18 The FEIS did not assess the present viability of gray wolves on the Colville or how  
19 continued livestock grazing under the planning alternatives may affect this  
20 sensitive species' future viability on the National Forest. Nor did the Forest  
21 Service, in evaluating the suitability of Forest lands for domestic livestock grazing  
22 as the 1982 NFMA rule requires, consider possible conflicts between livestock and  
23  
24  
25  
26  
27  
28

1 wolves and examine any planning alternatives that incorporate methods for  
2 “regulating” such conflicts.

3  
4 71. Pursuant to the Forest Service’s administrative review process (also  
5 referred to as the “objection” process described in 36 CFR 219 Subpart B of the  
6 2012 NFMA planning rule), Plaintiffs filed objections to the FEIS and draft ROD  
7 for the revised Forest Plan.  
8

9 72. In a jointly submitted objection, Western Watersheds Project and  
10 Kettle Range Conservation Group highlighted the Forest Service’s failure to  
11 disclose and analyze the risks posed to wolves from federally permitted livestock  
12 grazing and the need to modify grazing management in order to reduce wolf-  
13 livestock conflicts on the Colville National Forest.  
14  
15

16 73. For instance, both USFWS and WDFW experts have recommended  
17 the following science-backed measures for reducing wolf-livestock conflicts that  
18 the Forest Service could have adopted as Forest-wide grazing management  
19 direction:  
20  
21

- 22 • Removing livestock carcasses on the allotments if they would attract
- 23 wolves to a potential conflict situation with other grazing livestock;
- 24 • Removing sick or injured livestock from the allotments, so they are not
- 25 targeted by wolves;
- 26 • Delaying turnout until after early to mid-June if an active wolf den site is
- 27 within 1 mile of an allotment unit, so deer will be birthing fawns and can
- 28 provide an abundant and easy prey source for wolves;
- If an active wolf den site is within or adjacent to an allotment, delay
- turnout of calves in the area until after they average 200 pounds in weight
- to minimize depredation potential;

- Prohibit allotment management activities by humans near active wolf den sites during the denning period, to avoid human disturbance of the site;
- Prohibit placing salt or other livestock attractants near wolf dens or rendezvous sites, to minimize cattle use of these sites;
- In the event of depredation, consider moving livestock to another unit or another allotment;
- During times that livestock are in a unit with an active wolf den site or rendezvous site, require the permittee to inspect that unit at least 2 days/week;
- Manage grazing livestock near the core areas (dens, rendezvous sites) of wolf territories to minimize wolf-livestock interactions, such as by placing watering sites, mineral blocks, and supplemental feed away from wolf core areas;
- Temporarily switch grazing sites and move livestock to another location away from core areas;
- Increase the frequency of human presence by using range riders and guard animals and frequently check livestock in areas with wolves or when wolves are in the vicinity of livestock pastures.<sup>8</sup>

74. In fact, “range management” standards and guidelines in the prior 1988 Colville Forest Plan expressly directed the Forest Service, in developing allotment-specific management plans (AMPs), to give special consideration to: (1) protecting any threatened, endangered or sensitive species present in the area and

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<sup>8</sup> U.S. DEPT. FISH & WILDLIFE AND U.S. FOREST SERV., POTENTIAL CONSERVATION MEASURES TO REDUCE EFFECTS OF THE GRAZING ALLOTMENTS TO GRAY WOLVES (working draft); WASH. DEPT. OF FISH AND WILDLIFE, STAFF GUIDELINES: LIVESTOCK-WOLF MITIGATION MEASURES; WASH. DEPT. OF FISH AND WILDLIFE AND WESTERN WILDLIFE OUTREACH, LIVING WITH LIVESTOCK AND WOLVES: A PRACTICAL GUIDE TO AVOIDING CONFLICTS THROUGH NON-LETHAL MEANS, (2014).

(2) mitigating livestock-wildlife conflicts. The Forest Service abandoned this explicit direction in the revised 2019 Plan.

75. Also, as Plaintiffs noted in their objection, the Forest Service recently proposed incorporating wolf-livestock conflict reduction measures, similar to some of the measures listed in paragraph 73, in its revised Forest Plans for other National Forests in eastern Oregon.<sup>9</sup> For example, the Forest Service proposed the following management standards in the revised Forest Plans for the Wallowa-Whitman, Umatilla, and Malheur National Forests:

- Management activities within one mile of a known active (during same calendar year that use is documented) wolf den and rendezvous sites should implement appropriate seasonal restrictions based on site specific consideration and potential activity effects, to reduce disturbance to denning wolves.
- Do not authorize turnout of sick or injured livestock to reduce risk of attracting wolves.
- Remove or otherwise dispose of livestock carcasses such that the carcass will not attract wolves. If, due to location of the carcass, this is not possible, develop other remedies.
- Do not authorize salt or other livestock attractants near known active (during same calendar year that use is documented) wolf dens or rendezvous sites to minimize livestock use of these sites.

76. Yet the Forest Service never publicly evaluated incorporating such wolf-livestock conflict reduction measures into management direction for the

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<sup>9</sup> Wolves in Oregon and Washington have followed similar trajectories over the last decade, dispersing westward from neighboring states in the Northern Rockies and first recolonizing historic habitat in the northeastern portions of these states.

1 revised Colville Forest Plan under any alternative the agency considered in its  
2 programmatic EIS.

3 77. In October 2019, without resolving Plaintiffs' objection with respect  
4 to modifying grazing management to reduce wolf-livestock conflicts on the  
5 Colville, or even acknowledging the issue of how livestock grazing affects wolves  
6 on this National Forest, the Forest Service signed its final ROD adopting the  
7 management directives described in the FEIS under alternative P as the new  
8 governing Colville Forest Plan for at least the next fifteen years—or, if prior  
9 precedent is any guide, for the next 30 years.  
10  
11

12  
13 **Diamond M's Cattle Grazing on the Colville and its Highly Disproportionate**  
14 **Rate of Conflict with Gray Wolves**

15 78. For roughly the past 75 years, the Forest Service has issued Diamond  
16 M Ranch, a partnership of the McIrvin family and reportedly the largest cattle  
17 producer in Washington, a series of permits to graze cattle on the Colville National  
18 Forest.  
19  
20

21 79. Most recently, in 2013, the Forest Service issued Diamond M a 10-  
22 year term permit allowing 736 cow and calf pairs to graze between summer and  
23 mid-autumn on the Churchill, Lambert, C.C. Mountain, Hope Mountain, and  
24 Copper-Mires allotments, which collectively span over 74,000 acres of federal  
25 Forest lands in the Colville's northern portion and Kettle River Range.  
26  
27  
28



1           80.    The expansive Kettle River Range is prime wolf country—a rugged,  
2 mountainous, and heavily treed landscape with a significant native prey base.



13 Photo credit: Timothy Coleman (Executive Director, Kettle Range Conservation  
14 Group); image features portions of the C.C. Mountain allotment, with the Profanity  
15 Peak Inventoried Roadless Area in the foreground.

16           81.    Diamond M’s federally-permitted cattle grazing on the Colville has  
17 been the source of mounting, high-profile conflicts that have resulted in numerous  
18 preventable wolf deaths.

19  
20           82.    In 2012, WDFW killed seven of eight wolves from the Wedge Pack  
21 on behalf of Diamond M as a result of cattle predations that occurred on the  
22 northern portion of the Colville.

23  
24           83.    In 2016, WDFW killed seven wolves from the Profanity Peak Pack on  
25 behalf of Diamond M as a result of cattle predations in the Colville’s Kettle River  
26 Range. This lethal control action ultimately destroyed the entire Profanity Peak  
27  
28



1 Pack as it left only one adult female and three pups, who did not survive to the  
2 following year.

3 84. In 2017, the Sherman Pack almost immediately moved into the  
4 Profanity Peak Pack's former territory. After determining the Sherman Pack was  
5 responsible for depredations on Diamond M's cattle in the Colville's Kettle River  
6 Range, WDFW killed one of only two of the pack's remaining members,  
7 destroying the pack.<sup>10</sup> In 2017, WDFW also killed two wolves from the Smackout  
8 Pack on behalf of another livestock owner as a result of predations on private land  
9 adjacent to the Colville and predations on federal lands in the Forest's eastern  
10 region.  
11

12 85. In 2018, a new wolf pack – the Old Profanity Territory ("OPT") Pack  
13 – moved into the territory formerly occupied by the Profanity Peak and Sherman  
14 Packs in the Colville's Kettle River Range. On separate occasions that year,  
15 WDFW killed two members of the OPT Pack in response to predations of  
16 Diamond M's cattle in the Colville's Kettle River Range and one wolf from the  
17 Smackout Pack on behalf of Diamond M as a result of predations on private land  
18 near the eastern region of the National Forest. In 2018, WDFW also killed one  
19

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20 <sup>10</sup> WDFW reported that the Sherman Pack started the year with 5 wolves, but the  
21 state agency was unable to later locate two of them and one female was killed by a  
22 car in March 2017, thus only 2 wolves remained in this pack by the time WDFW  
23 issued its kill order.  
24

1 wolf from the Togo Pack on behalf of another livestock owner as a result of  
2 predations in the Colville's Kettle River Range.

3  
4 86. In January 2019, WDFW determined members of the OPT Pack killed  
5 three cattle Diamond M had *unlawfully* left in the Kettle Range mountains over the  
6 winter, beyond the season of use dates authorized in its federal grazing permit.  
7  
8 WDFW ultimately killed eight wolves from the OPT Pack, destroying the entire  
9 pack, after additional depredations of Diamond M's cattle in the Colville's Kettle  
10 River Range the following summer.

11  
12 87. Of the four packs WDFW has destroyed since 2012, all were killed on  
13 behalf of Diamond M Ranch within the Colville National Forest: Wedge Pack  
14 (2012), Profanity Peak Pack (2016), Sherman Pack (2017), and OPT Pack (2019).

15  
16 88. Since 2012, the state has spent well over \$320,000.00 of taxpayer  
17 dollars carrying out these lethal control actions against wolves.

18  
19 89. Year after year, since 2012, Diamond M has lost cattle to wolves on  
20 federal allotments within the Colville while neighboring permittees have been able  
21 to fairly effectively protect their herds.

22  
23 90. Since WDFW finalized its state recovery plan for wolves in 2011,  
24 many of Washington's livestock owners have agreed to cooperate with the state  
25 agency to employ non-lethal measures to reduce wolf-livestock conflicts.  
26  
27  
28

1           91.   WDFW offers livestock owners the opportunity to enter into Damage  
2 Prevention Cooperative Agreements, which provides a cost-share for the  
3 implementation of non-lethal conflict prevention measures, such as range riders,  
4 improved sanitation practices (e.g. treatment or removal of injured or dead  
5 livestock), checking on livestock daily, fladry (the use of flagging to frighten away  
6 predators) and fencing.  
7  
8

9           92.   Diamond M has steadfastly refused to become a signatory to  
10 WDFW's Damage Prevention Cooperative Agreement, to cooperate with WDFW  
11 on employing non-lethal deterrent measures, or to follow the recommendations of  
12 conservation biologists for best management practices.  
13  
14

15           93.   WDFW's 2016 predation reports show Diamond M has turned young  
16 calves out on the Colville's federal allotments before they had reached 200 pounds  
17 (the weight both USFWS and WDFW experts recommend to minimize wolf  
18 depredation potential).  
19

20           94.   WDFW's reports also show that many of Diamond M's cows and  
21 calves were not discovered for days, or even weeks, after they were injured by  
22 wolves, indicating the permittee either failed to maintain a regular presence on the  
23 allotments to monitor the health of its herds or intentionally left injured cattle in  
24 the allotments. Either scenario is problematic as wolves are drawn to sick or  
25  
26  
27  
28

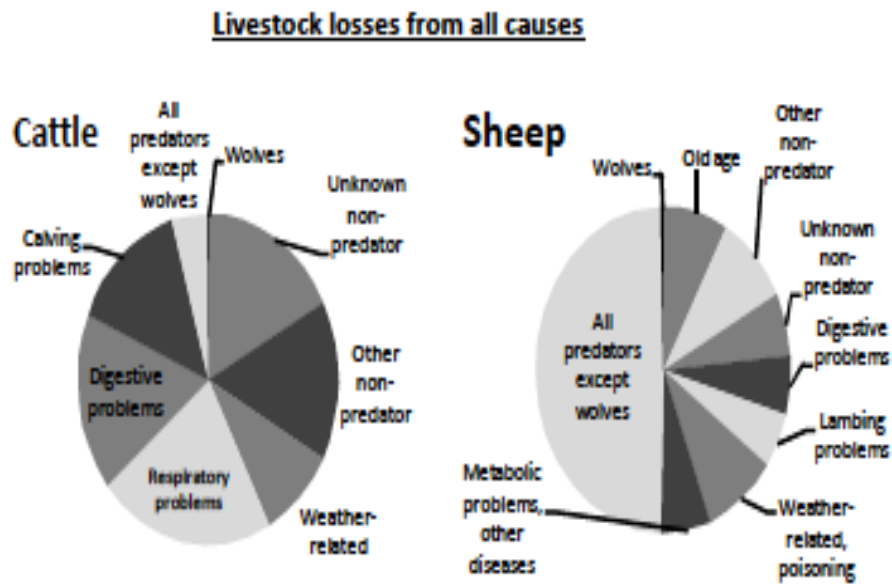
1 injured livestock, and leaving them on the allotments puts all surrounding cattle at  
2 greater risk.

3           95. Unlike the surrounding permittees who suffered no livestock  
4 predations from wolves in 2019, Diamond M refused the use of state-funded range  
5 riding services contracted by WDFW to protect its cattle. WDFW officials have  
6 noted that Diamond M will not use its contracted range riders because of fear they  
7 would report allotment violations to the Forest Service. WDFW officials further  
8 acknowledged that over each of the past four years that it killed wolves in response  
9 to depredations of Diamond M's cattle on the Colville's federal allotments, that  
10 Diamond M "never had actual, quality range riding on this landscape." In fact, the  
11 only range riders Diamond M allowed to monitor its cattle while grazing public  
12 lands on the Colville in 2017 and 2018 were a family that claimed compensation  
13 from the state for range riding on dates when a WDFW criminal investigation  
14 revealed they were far from the allotments (*e.g.* shopping in Idaho, at a casino, or  
15 hotels in Spokane).

16           96. As the following chart used in the WA wolf plan shows, wolves are  
17 generally responsible for fewer than 0.1% of cattle losses, with the vast majority of  
18 deaths from illness, weather, and calving problems.

19 //

20 ///



97. Between 2012 and 2018, when the Washington wolf population grew from a minimum of 51 wolves to 126, WDFW confirmed 45 cattle were killed by wolves (of the roughly 1.2 to 1.4 million head of cattle annually grown in Washington state)<sup>11</sup>—an average of 6.4 attributed to wolves per year. These numbers are consistent with data gathered for two Washington State University (“WSU”) studies, which found wolf predations on Washington livestock were extremely rare.<sup>12</sup> One study collared 588 calves in 10 herds over two grazing

<sup>11</sup>U.S. DEPT. OF AG., NAT’L AG. STATISTICS SERV., CATTLE REPORT (January 2020) [https://www.nass.usda.gov/Publications/Todays\\_Reports/reports/cat10120.pdf](https://www.nass.usda.gov/Publications/Todays_Reports/reports/cat10120.pdf)

<sup>12</sup> The data for these WSU studies was gathered by Dr. Robert Wielgus, Director of WSU’s Large Carnivore Conservation Lab, from WSU radio-telemetry data of

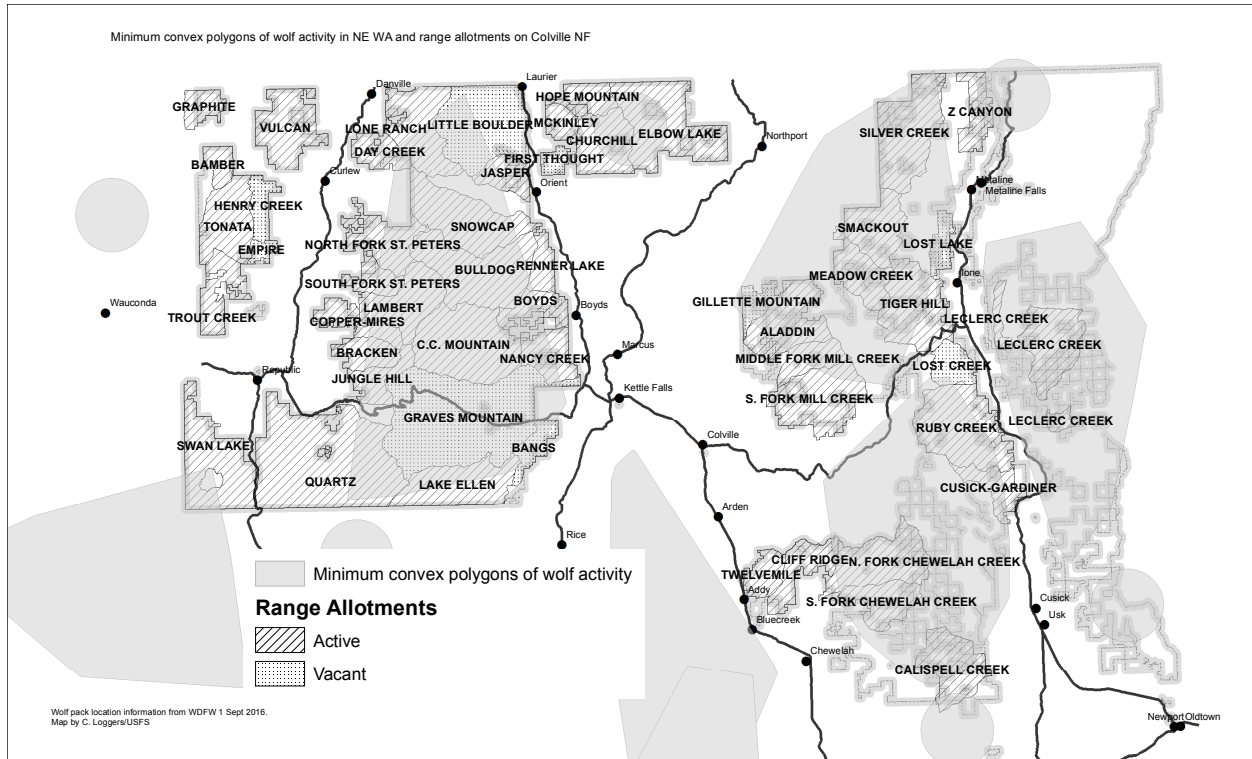
1 seasons, but detected no wolf-caused mortalities in any collared animals—  
2 extrapolating that livestock losses to wolves were at most 0.81%.<sup>13</sup> Another study,  
3 by a WDFW biologist (the “Spence Study”), monitored 10 wolf packs over three  
4 grazing seasons, finding that, on average, wolves killed just 0.3 percent of cattle in  
5 wolf pack territory.<sup>14</sup> But there was one big exception: the predation rate on cattle  
6 belonging to Diamond M was roughly *14 times* higher than the average for other  
7 Washington livestock owners in wolf territory. *Id.*

10 98. This dramatic difference in depredation rates is not because wolf  
11 territories center solely around the five allotments permitted to Diamond M: the  
12 OPT pack’s territory alone overlapped with 13 different federal grazing allotments.  
13 The following map of known wolf activity on the Colville in 2016 that was  
14 developed by the Forest Service illustrates this point.  
15  
16  
17  
18  
19  
20  
21  
22

23 wolves and livestock, date and time stamped video records of wolves and  
24 livestock, and WDFW’s public records.

25 <sup>13</sup> Brown, J. & Wielgus, R. (Chair) (WSU 2016), “Mortality of Range Livestock in  
26 Wolf-Occupied Areas of Washington,” Abstract.

27 <sup>14</sup> Spence, G. & Wielgus, R. (Chair) (WSU 2017), “Wolf Predation on Livestock in  
28 Washington,” Abstract.



99. For more than a decade, Diamond M's owners have publicly aired their unwillingness to coexist with wolves. Indeed, although Diamond M raises its cattle for slaughter and profit, it refuses to enter into a contract with the state that would give it compensation for its losses to wolves—in exchange for which it would have to agree to cooperate with WDFW to protect its livestock. Instead, Diamond M's owner insists the only compensation he is interested in is “a dead wolf for every dead calf.”<sup>15</sup>

<sup>15</sup>Matthew Weaver, *Wolf Kill Fails to Placate Washington Rancher*, THE BLUE MOUNTAIN EAGLE, Aug. 8, 2012, <https://www.bluemountaineagle.com/news/wolf-complaint>

**The Forest Service's Failure to Responsibly Manage  
Livestock Grazing on the Colville**

100. The Forest Service, as the federal land manager and agency responsible for administering livestock grazing on National Forest lands, has broad authority to modify, cancel, or suspend grazing permits; update AMPs; and adjust annual grazing instructions for the benefit of special resources that occur on federal allotments. The Forest Service also has a heightened duty under NFMA to protect the Forest's sensitive species like the gray wolf because their regional population viability is already a concern.

101. For the past several years, wildlife advocates, concerned citizens, Public Employees for Environmental Responsibility (PEER), and even the Forest Service's own employees, have called upon the federal managers of the Colville to at least modify, if not suspend, Diamond M's federal grazing privileges in light of this permittee's well-documented recalcitrant behavior and high-conflict grazing practices; urging agency officials fulfill their obligation to ensure public lands grazing does not threaten the recovery and viability of this ecologically important, native carnivore as it gains a foothold in its historic habitat.

102. Indeed, WDFW's repeated killing of wolves in response to Diamond M's cattle depredations on the Colville, when little to no non-lethal deterrent

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kill-fails-to-placate-washington-rancher/article\_a991a8b1-33b3-55ea-959f-dccbbee38d0.html



1 measures had been in place, even prompted Washington Governor Jay Inslee to  
2 write WDFW in September 2019, calling the state agency's annual status quo wolf  
3 killing "simply unacceptable;" requesting WDFW work with the Forest Service  
4 "to make changes that would reduce the conflicts, including changes in  
5 allotment policies for public lands that are prime wolf habitat, the addition of  
6 more intensive range riding, and other proven or promising methods."

9 103. Ignoring this public outcry, the Forest Service continues authorizing  
10 the same problematic cattle grazing it knows will likely end in dead wolves,  
11 without imposing any modifications to avoid or reduce wolf-livestock conflicts on  
12 the Colville.  
13

14 104. The Forest Service can adjust the timing, intensity, duration, and  
15 location of annual grazing. Yet the agency instead authorizes Diamond M to  
16 repeatedly concentrate its cattle in known core wolf areas, even after the discovery  
17 of active wolf rendezvous sites and nearby dens. In 2016, after Diamond M and the  
18 Forest Service learned that a salt block was placed near an active den site, the  
19 agency did not require Diamond M to move its cattle to safety in more distant  
20 pastures, and Diamond M refused to do so on its own accord. Worse yet, the Forest  
21 Service authorized the salt blocks to remain in this high conflict area for the 2018  
22 and 2019 grazing seasons, which is frequently near den and/or rendezvous sites.  
23 And then the Forest Service sat idly by while the predations piled up and Diamond  
24  
25  
26  
27  
28

1 M's demands for dead wolves were swiftly met by a series of lethal control actions  
2 by WDFW.

3  
4 105. The Forest Service has ignored numerous other grazing management  
5 options to reduce wolf-livestock conflicts and in turn protect the wolf's future  
6 viability on the Colville. For instance, in addition to modifying the timing and  
7 location of grazing, such as by delaying turnout in core wolf areas, the Forest  
8 Service can also modify the class of livestock permitted to graze federal  
9 allotments. Currently, it authorizes Diamond M to graze 736 cow/calf pairs, which  
10 allows up to 736 especially vulnerable young calves to graze in prime wolf  
11 country. Rather than consider modifying Diamond M's permit to only allow  
12 grazing adult cows, or at least require calves to be above 200 pounds in weight by  
13 turnout, the Forest Service again has done nothing.



27 Photo credit: Timothy Coleman (Executive Director, Kettle Range Conservation  
28 Group); image of cows with young calves in the Deadman pasture on the C.C.  
Mountain allotment, June 8, 2020.

1           106. The Forest Service could also require permittees to use consistent and  
2 reliable range riders, monitor the location and health of their herds on a frequent  
3 basis, and immediately remove sick, injured, or dead cattle to avoid attracting  
4 wolves to areas actively being grazed by livestock. But it has not required  
5 Diamond M to do so.  
6

7  
8           107. The Forest Service has also not taken any corrective action in  
9 response to Diamond M's repeated failure to timely move its cattle off the National  
10 Forest. Taking corrective action could have avoided livestock depredations and  
11 subsequent wolf killings. Violating the terms of its grazing permit, AMPs, and  
12 annual grazing instructions, Diamond M has left its cattle to languish in the rugged,  
13 forested terrain of the Colville's Kettle River Range beyond the permitted season  
14 of use dates for each of the five allotments, which all expire between September 30  
15 and October 31, including deep into winter. The Forest Service has broad authority  
16 to impose repercussions for permit non-compliance. Yet the agency again turns a  
17 blind eye. Also, in 2018, the Forest Service extended Diamond M's season of use  
18 date for the C.C. Mountain allotment, via a letter, *after* the authorized period of use  
19 on that allotment expired and a depredation of cattle that Diamond M failed to  
20 timely remove by its specified October 15 off-date occurred. The Forest Service's  
21 action extending the season of use enabled WDFW to issue a late season kill order  
22 in response.  
23  
24  
25  
26  
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28

**The Forest Service's Outdated NEPA Analyses and AMPs  
for Diamond M's Grazing**

108. The wolf's return to the Colville and several consecutive years of conflicts with Diamond M's cattle grazing on the Forest triggered the agency's duty to supplement its severely outdated environmental analyses for the five allotments permitted to Diamond M and the resulting Allotment Management Plans that guide site-specific grazing management thereon.

109. But instead of publicly disclosing and carefully assessing the environmental impacts of Diamond M's cattle grazing in prime wolf country to this state-listed endangered and sensitive species, as NEPA requires, the Forest Service continues to rely on allotment-specific management direction, AMPs, that were developed from analyses for the Churchill, Lambert, C.C. Mountain, Hope Mountain, and Copper-Mires allotments (collectively the "Diamond M allotments") that mostly date back to the 1970s.

110. Specifically, the Forest Service's grazing authorizations for Diamond M continue to rely on the following:

- A 1976 "Environmental Analysis Report" and resulting AMP for the Copper-Mires allotment;
- Three separate EAs and corresponding AMPs from 1979 for the Lambert, C.C. Mountain, and Hope Mountain allotments;
- A 1985 AMP for the Churchill allotment; and
- A 2007 Decision Memo that categorically excluded grazing management on the Hope Mountain and Churchill allotments, among other adjacent allotments, from environmental review in an EA or EIS

1 under the “2005 Grazing Rider” FY 2005 Consolidated Appropriations  
2 Act, Pub. L. No. 108-447, Sec. 339.

3 111. Thus, more than 35 to 40 years have passed since the Forest Service  
4 assessed the environmental impacts of, or need to modify, its grazing management  
5 direction for the Diamond M allotments.  
6

7 112. On March 27, 2020, Plaintiffs WildEarth Guardians and WWP sent  
8 the Forest Service a letter identifying the need for the agency to supplement its  
9 outdated NEPA analyses for the Diamond M allotments given the wealth of  
10 significant new information and changed circumstances that have emerged since its  
11 prior decades-old analyses and AMPs.  
12  
13

14 113. In addition to the obvious new facts and circumstances surrounding  
15 the gray wolf’s return to the Colville and years of conflicts with Diamond M’s  
16 cattle, Plaintiffs’ letter highlighted recommendations from state and federal  
17 wildlife agencies for reducing wolf-livestock conflicts. Plaintiffs’ letter referenced  
18 numerous scientific studies supporting the efficacy of such non-lethal measures. It  
19 also referenced many studies that show killing wolves in response to livestock  
20 depredations is unlikely to prevent future conflicts from recurring and may even  
21 *increase* conflicts by causing compensatory breeding and disrupting complex, wolf  
22 pack dynamics. Plaintiffs’ letter additionally pointed to several recent studies  
23 demonstrating the critically important ecological role that wolves, as top predators,  
24 play in recovering and maintaining healthy ecosystems and how wolf removal has  
25  
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1 cascading negative effects. Plaintiffs also sent most of these studies and scientific  
2 literature references on a thumb drive to the Colville's Forest Supervisor in hopes  
3 of facilitating a prompt review.  
4

5 114. To date, however, the Forest Service has not responded to Plaintiffs'  
6 letter or issued any public notice indicating it would prepare supplemental NEPA  
7 analyses to address the impacts of Diamond M's grazing on the Colville's wolves  
8 and the need to update stale AMPs to provide new management direction, based on  
9 current science, for mitigating wolf-livestock conflicts on these federal Forest  
10 lands.  
11

12  
13 **Potential Impacts to ESA-Listed Species and Their Habitats**  
14 **from Diamond M's Grazing**  
15

16 115. The Forest Service has additionally failed to consider the potential  
17 impacts of Diamond M's grazing on gravely imperiled species federally protected  
18 under the ESA. Threatened bull trout and its critical habitat, endangered woodland  
19 caribou and its critical habitat, threatened grizzly bear, and threatened Canada lynx  
20 are all present on the Colville National Forest. There is also suitable habitat for  
21 yellow-billed cuckoo (listed threatened species) and both wolverine and whitebark  
22 pine are present (candidate species).  
23

24 116. The Kettle-Wedge "core area" is considered important for the  
25 recovery of Canada lynx in Washington, portions of which overlap with the  
26 Diamond M allotments. The USFWS defines core areas as those areas with the  
27  
28

1 strongest long-term evidence of the persistence of lynx populations over time  
2 within the contiguous United States. Among other potential effects to lynx,  
3 livestock grazing can indirectly affect this threatened species by adversely  
4 affecting riparian areas that provide habitat for snowshoe hare, a primary food  
5 resource for lynx. Lynx are also sensitive to human disturbance, so livestock  
6 grazing and associated activities can impair the lynx's need for seclusion.  
7  
8

9 117. Threatened grizzly bears have been documented on adjacent lands and  
10 may also be present on the Copper-Mires, Lambert, and C.C. Mountain allotments.  
11 Among other potential effects, livestock grazing may adversely affect this listed  
12 species through direct and indirect competition for forage, and the potential for  
13 disturbance and/or mortality when grizzly bears come into contact with people  
14 and/or livestock.  
15  
16

17 118. Whitebark pine, a candidate species for federal listing and important  
18 food source for threatened grizzly bears, is also present on the Diamond M  
19 allotments and may be adversely affected by livestock grazing. Livestock tend to  
20 seek shade under large whitebark pine trees. This behavior exacerbates soil  
21 compaction and erosion around the tree trunk, which can expose the roots and can  
22 reduce the likelihood of seedling establishment. Cattle can also create conditions  
23 that favor the establishment of faster-growing sub-alpine fir and other shade  
24 tolerant species that displace whitebark pine.  
25  
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1           119. Upon information and belief, the Forest Service has failed to prepare a  
 2 Biological Assessment and consult the USFWS, pursuant to the ESA, since at least  
 3 2000 regarding the impacts of Diamond M's cattle grazing on the Copper-Mires,  
 4 Lambert, and C.C. Mountain allotments to federally listed threatened and  
 5 endangered species, proposed and/or candidate species (*e.g.* Canada lynx, grizzly  
 6 bear and whitebark pine), which are known or suspected to be present in those  
 7 areas. Consequently, on April 1, 2020, Plaintiffs WildEarth Guardians and WWP  
 8 sent the Forest Service a sixty-day notice of intent to bring legal action pursuant to  
 9 the ESA for these failures.  
 10  
 11

12  
 13                                   **FIRST CLAIM FOR RELIEF**  
 14                   **VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT**  
 15                   **(Failure to Address Impacts to Wolves Under the New Colville Forest Plan**  
 16                   **and to Evaluate Reasonable Grazing Management Alternatives that Reduce**  
 17                   **Wolf-Livestock Conflicts)**

18           120. Plaintiffs reallege and incorporate by reference the preceding  
 19 paragraphs.  
 20

21           121. The Forest Service failed NEPA's hard look mandate in multiple  
 22 respects with regard to the revised Colville Forest Plan:

- 23                   A. The FEIS for the 2019 Colville Forest Plan failed to publicly disclose  
 24 and analyze the potential direct, indirect, and cumulative  
 25 environmental effects of authorizing livestock grazing under newly  
 26 proposed management direction to state-listed endangered and  
 27  
 28



1 sensitive gray wolves. For example, the FEIS failed to even  
2 acknowledge and disclose environmental baseline conditions with  
3 respect to gray wolves returning to the Colville over the last decade,  
4 establishing breeding pairs and packs, and contributing to this  
5 National Forest's diversity of plant and animal communities;  
6

7  
8 B. The FEIS failed to disclose and analyze how the series of conflicts  
9 between this sensitive species and federally permitted cattle grazing  
10 on the Forest has affected wolves and their current Forest-wide  
11 population status or trend;  
12

13 C. The FEIS failed to analyze, in light of this series of past conflicts, how  
14 the continuation of livestock grazing under the revised Forest Plan  
15 may affect the wolf's future viability on the Colville and, in turn, the  
16 diversity of wildlife on the National Forest;  
17

18  
19 D. The FEIS failed to consider how abandoning stringent management  
20 standards under the prior 1988 Colville Forest Plan, which expressly  
21 required the agency to consider incorporating measures for protecting  
22 sensitive species like the gray wolf and reducing wildlife-livestock  
23 conflicts into allotment-specific AMPs, may impact wolves on the  
24 National Forest;  
25  
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1 E. The Forest Service failed to thoroughly consider and objectively  
 2 evaluate an adequate range of alternatives because not one of the six  
 3 planning alternatives the agency assessed in detail included Forest-  
 4 wide grazing directives that incorporated measures for reducing wolf-  
 5 livestock conflicts.  
 6

7  
 8 122. The Forest Service thus failed to disclose and analyze all the revised  
 9 Forest Plan's environmental impacts, and failed to evaluate reasonable alternatives  
 10 for Forest-wide grazing management direction, contrary to NEPA requirements. 42  
 11 U.S.C. § 4332(2)(C); 40 C.F.R. Parts 1502 and 1508.  
 12

13 123. The FEIS, and the revised Colville Forest Plan relying on that FEIS,  
 14 are therefore arbitrary, capricious, and not in accordance with law and should be  
 15 set aside pursuant to the APA. 5 U.S.C. § 706(2).  
 16

17  
 18 **SECOND CLAIM FOR RELIEF**  
 19 **VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT**  
 20 **(Failure to Prepare Supplemental NEPA Analyses for**  
 21 **the Diamond M Allotment Management Plans)**

22 124. Plaintiffs reallege and incorporate by reference the preceding  
 23 paragraphs.

24 125. NEPA's regulations require an agency to prepare supplemental NEPA  
 25 analysis if the agency makes substantial changes to the proposed action or if there  
 26 are significant new circumstances or information relevant to environmental  
 27  
 28

1 concerns and bearing on the proposed action or its impacts. 40 C.F.R. §  
2 1502.9(c)(1)(i)-(ii).

3  
4 126. The Ninth Circuit has also determined that environmental analyses  
5 must be completed before an agency makes any “irreversible and irretrievable  
6 commitment of resources.” *See ONDA v. Sabo*, 854 F. Supp. 2d 889, 923-24 (D.  
7 Or. 2012) (citing *Conner v. Burford*, 848 F.2d 1441, 1446 (9th Cir. 1988); *Metcalf*  
8 *v. Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000); *WWP v. BLM*, Civ. No. 09–0507–  
9 E–BLW, 2009 WL 3335365, at \*6 (D. Idaho Oct. 14, 2009)).  
10  
11

12 127. Events and information including, but not limited to those listed  
13 herein, constitute significant new circumstances or information relevant to  
14 environmental concerns regarding the continued authorization of cattle grazing on  
15 the Diamond M allotments. Principally, state-listed endangered and sensitive gray  
16 wolves have returned to the Colville; the Kettle River Range is prime wolf habitat  
17 with many active core wolf areas for the past several years; wolves have been  
18 active on all the Diamond M allotments; and conflicts between wolves and  
19 Diamond M’s federally permitted cattle have resulted in the lethal removal of at  
20 least 26 wolves and four wolf packs as of the date of this Complaint. Current  
21 science also shows conflicts are very likely to recur, despite the state’s lethal  
22 removal activities on Diamond M’s behalf, in the absence of science-backed non-  
23 lethal measures that mitigate wolf-livestock conflicts.  
24  
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1           128. The Forest Service relies on AMPs and their accompanying  
 2 environmental analyses that are more than three decades old to continue  
 3 authorizing grazing on the Diamond M allotments. The Forest Service's failure to  
 4 complete supplemental NEPA analysis that considers this ongoing action's impacts  
 5 on wolves and to update decades-old AMPs in light of these changed  
 6 circumstances and new information, as NEPA requires, is agency action  
 7 unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1).  
 8  
 9

10           129. To the extent the Forest Service affirmatively decided supplementing  
 11 Diamond M's outdated NEPA analyses was unwarranted, such as through  
 12 Supplemental Information Reports (SIRs), those decisions are arbitrary, capricious,  
 13 and not in accordance with law and should be set aside pursuant to the APA. 5  
 14 U.S.C. § 706(2).  
 15  
 16

17  
 18                           **THIRD CLAIM FOR RELIEF**  
 19           **VIOLATIONS OF THE NATIONAL FOREST MANAGEMENT ACT**  
 20           **(Revised Colville Forest Plan Fails to Meet NFMA's Requirements)**

21           130. Plaintiffs reallege and incorporate by reference the preceding  
 22 paragraphs.  
 23

24           131. As noted, NFMA and its regulations impose both procedural and  
 25 substantive requirements for Forest Plans. 16 U.S.C. § 1604(g)(3)(B); 36 C.F.R. §§  
 26 219.19; 219.20; 219.26 (1982).  
 27  
 28

1           132. The Forest Service violated NFMA’s procedural requirements by  
2 failing to consider during the Forest Plan revision process: (1) how the Colville’s  
3 wildlife diversity will be affected by the continuation of livestock grazing under  
4 management direction that omits any measures for mitigating wolf-livestock  
5 conflicts so as to reduce or avoid the lethal removal of wolves from the National  
6 Forest in response to depredations, 36 C.F.R. § 219.26 (1982), and (2) which  
7 portions of the Colville are suitable for grazing in light of repeated wolf-livestock  
8 conflicts, or any measures for “regulating” conflicts between livestock and wolves.  
9  
10 36 C.F.R. § 219.20 (1982).

11  
12  
13           133. The Forest Service also violated NFMA’s substantive requirements by  
14 failing to adopt management directives in the revised Colville Forest Plan related  
15 to livestock grazing to ensure viable populations of gray wolves will be maintained  
16 on the Colville National Forest. 16 U.S.C. § 1604(g)(3)(B); 36 C.F.R. § 219.19  
17 (1982). Livestock grazing direction from the Forest Plan is implemented through  
18 term grazing permits, AMPs, and annual grazing/operating instructions (AOIs),  
19 including the 2020 annual authorizations for Diamond M.  
20  
21  
22

23           134. Accordingly, the revised Colville Forest Plan is arbitrary, capricious,  
24 an abuse of discretion, and not in accordance with NFMA. 5 U.S.C. § 706(2)(A).  
25

26 //

27 ///

**FOURTH CLAIM FOR RELIEF  
VIOLATIONS OF THE NATIONAL FOREST MANAGEMENT ACT  
(Diamond M's Grazing Authorizations are Inconsistent  
with Forest Plan Direction)**

135. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

136. As required by NFMA and its planning rules, all projects and activities authorized by the Forest Service must be consistent with the applicable Forest Plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15 (2012). A project or activity must be consistent with *all* applicable plan components, including the desired conditions, standards and guidelines. *All. for the Wild Rockies v. United States Forest Serv.*, 907 F.3d 1105, 1110 (9th Cir. 2018).

137. The revised Colville Forest Plan includes the following relevant management directive:

***FW-DC-WL-10. Risk Factors for all Surrogate Species***

Risk factors (such as roads, uncharacteristic wildfire, unregulated livestock use, introduced species, invasive species, and disturbance during critical time periods) for all surrogate species are reduced to contribute to the viability of surrogate species and associated species.

138. According to the revised Forest Plan: “Surrogate species represent other species that share similar habitat and risk factors and include Region 6 sensitive species, state-listed species, or other species for which the published literature has identified concerns for their viability.” Thus, the gray wolf qualifies

1 as a surrogate species by virtue of being both a state-listed endangered species and  
2 a Region 6 sensitive species.

3 139. The Forest Service has acted inconsistently with this Forest Plan  
4 management directive by authorizing Diamond M's annual grazing in 2020, under  
5 the very same terms and conditions that resulted in several consecutive years of  
6 recurring wolf-livestock conflicts and subsequent lethal wolf removal from the  
7 Colville, without imposing any meaningful risk reduction measures to contribute to  
8 the wolf's future viability on this National Forest.

9 140. Accordingly, the Forest Service's 2020 grazing authorizations for the  
10 Diamond M allotments are arbitrary, capricious, an abuse of discretion, and not in  
11 accordance with NFMA. 5 U.S.C. § 706(2)(A).

12 **FIFTH CLAIM FOR RELIEF**  
13 **VIOLATIONS OF THE ENDANGERED SPECIES ACT**  
14 **(Failure to Consult over the Impacts of Diamond M's Grazing)**

15 141. Plaintiffs reallege and incorporate by reference the preceding  
16 paragraphs.

17 142. ESA section 7(a)(2) requires every federal agency, in consultation  
18 with the USFWS, to "insure that any action authorized, funded, or carried out by  
19 such agency ... is not likely to jeopardize the continued existence of any  
20 endangered species or threatened species or result in the destruction or adverse  
21 modification" of designated critical habitat. 16 U.S.C. § 1536(a)(2). An agency  
22  
23  
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1 must consult with USFWS under section 7(a)(2) whenever it takes an action that  
2 “may affect” a listed species, and complete such consultation before proceeding  
3 with the action. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a).  
4

5 143. At least since 2000, the Forest Service has failed to prepare a  
6 Biological Assessment to determine whether annual grazing on the Copper-Mires,  
7 Lambert, and C.C. Mountain allotments “may affect” listed, proposed and/or  
8 candidate species such as Canada lynx, grizzly bear and whitebark pine that may  
9 be present in the action area. Consequently, the Forest Service failed to consult  
10 USFWS as required by the ESA and its implementing regulations. 16 U.S.C. §  
11 1536(a)(2); 50 C.F.R. Part 400.  
12  
13

14  
15 144. The Forest Service’s refusal to ensure no jeopardy to listed, proposed  
16 and/or candidate species through consultation with the USFWS is a violation of its  
17 mandatory, affirmative duties under section 7(a)(2) of the ESA.  
18

19 145. This claim is brought pursuant to the judicial review provision of the  
20 ESA, 16 U.S.C. § 1540(g).  
21

## 22 **REQUEST FOR RELIEF**

23 A. Adjudge and declare that the Forest Service’s FEIS/ROD and revised  
24 Colville Forest Plan violated NEPA and/or NFMA, with respect to wolves and  
25 domestic livestock grazing, and thus is arbitrary, capricious, an abuse of discretion,  
26  
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1 contrary to law, and/or issued without observance of procedure required by law  
2 under the judicial review standards of the APA, 5 U.S.C. § 706(2);

3 B. Adjudge and declare that the Forest Service violated NEPA by failing  
4 to supplement decades-old environmental analyses for the Diamond M Allotment  
5 Management Plans and order the Forest Service to prepare supplemental NEPA  
6 analyses that consider wolf-livestock conflicts on the Diamond M allotments  
7 before issuing further grazing authorizations for these five allotments, 5 U.S.C. §  
8 706(1);

9 C. Adjudge and declare that the Forest Service's 2020 grazing  
10 authorizations for the five Diamond M allotments violated NFMA, and thus are  
11 arbitrary, capricious, an abuse of discretion, and/or contrary to law under the  
12 judicial review standards of the APA, 5 U.S.C. § 706(2);

13 D. Adjudge and declare that the Forest Service violated the ESA by  
14 failing to prepare a BA and consult the USFWS over potential impacts of livestock  
15 grazing on the Copper-Mires, Lambert, and C.C. Mountain allotments to listed,  
16 proposed and/or candidate species that may be present in the action area;

17 E. Vacate and set aside the revised Colville Forest Plan and underlying  
18 FEIS/ROD as they relate to wolves and domestic livestock grazing;

19 F. Enter such other declaratory relief, and temporary, preliminary, or  
20 permanent injunctive relief as may be requested hereafter by Plaintiffs;  
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1           G.     Retain jurisdiction over this case until the agency complies with  
2 NEPA, NFMA, and/or the ESA;

3           H.     Award Plaintiffs their reasonable costs, litigation expenses, and  
4 attorneys' fees associated with this litigation pursuant to the Equal Access to  
5 Justice Act, 28 U.S.C. § 2412 *et seq.* and/or the ESA, 16 U.S.C. § 1540(g)(4); and  
6

7           I.     Grant such further relief as the Court deems just and proper.  
8

9  
10 Respectfully submitted this 17th day of June 2020.

11                                 /s/ Jennifer Schwartz  
12                                 Jennifer R. Schwartz

13                                 *Of Counsel for Plaintiffs*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 2020, I electronically filed the foregoing Complaint, Civil Cover Sheet and Proposed Summonses with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record.

/s/ Jennifer Schwartz

Jennifer R. Schwartz

*Of Counsel for Plaintiffs*